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May 18, 1992

BY HAND DELIVERY

Mr. David R. Siddall
Chief, Frequency Allocation Branch
Federal Communications Commission
2025 M Street, N.W., Room 8002
Washington, DC 20554

COMMENTS ON
FREEDOM OF
INFORMATION ACT
REQUESTS AND
ACTION

RECEIVED

MAY 18 1992

Federal Communications Commission
Office of the Secretary

RE: Motorola Satellite Communications, Inc. Request for
Confidential Treatment in ET Docket No. 92-28.

Dear Mr. Siddall:

Loral Qualcomm Satellite Services, Inc. ("LQSS") hereby comments on the response of Motorola Satellite Communications, Inc. ("Motorola"), filed May 11, 1992, to your decision dated May 4, 1992, with respect to the release of information submitted by Motorola on April 10, 1992 pursuant to Sections 0.457 and 0.459 of the Commission's Rules.

Motorola filed the materials at issue in connection with its Request for a Pioneer's Preference (PP-32) and its application for a low-earth orbit satellite communications system. See Motorola Application (File Nos. 9-DSS-P-91(87) & CSS-91-010, filed December 3, 1990).

LQSS is also an applicant for a LEO satellite communications system (File Nos. 19-DSS-P-91(48) and CSS-01-014) and a pioneer's preference in connection with that application (PP-31). On April 23, 1992, LQSS filed an Opposition to Motorola's Request for Confidential Treatment of the above-referenced materials, requesting, inter alia, that it be allowed to review the materials if they were to be considered by the Commission in relation to Motorola's pioneer's preference request. LQSS Opposition, at 9-10. Specific Freedom of Information Act Requests for Inspection were filed by other applicants in the RDSS/LEO proceeding: TRW, Inc., Constellation Communications, Inc. and Ellipsat Corporation.

On May 4, 1992, the requests of TRW, Constellation and Ellipsat were granted in part and denied in part. With respect to the materials as to which those requests were denied, you indicated that the materials would not be considered by the Commission unless Motorola agreed to a protective order under

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which these materials would be reviewed by "specified individuals" and Commission Staff.

On May 11, 1992, Motorola responded by letter that it would agree in part to the protective order procedure if certain materials were redacted prior to release. Letter of Philip L. Malet (May 11, 1992). It also requested the return without consideration of certain materials, and stated that it would agree to the release of others.

As an interested party to this proceeding which has requested review of the Motorola materials, LQSS opposes the Commission's grant of confidential treatment to certain Motorola materials for the reasons given in its April 23 Opposition, which is hereby incorporated by reference. As discussed in LQSS's Opposition, which was not addressed in your May 4 letter, to the extent these materials are described by Motorola in its April 10 filing and its May 11 response, it appears that the public interest warrants full disclosure if the materials are to be considered by the Commission for any purpose.

While LQSS supports the decision to allow interested parties access to these materials if they are considered by the Commission in acting on Motorola's request for a pioneer's preference, LQSS is concerned whether the release of these materials only to Commission Staff and "specified individuals" under a proposed protective order would be adequate to protect the rights of competing applicants.

In the process of reviewing another applicants' technical information, LQSS, and other parties, must employ a variety of legal and technical experts. If such review were unduly restricted, then LQSS would not have an adequate opportunity to comment on the merits of Motorola's request, which would, in turn, be contrary to the public interest. Because the terms of any protective order have not yet been determined, LQSS cannot at this time agree that release of the Motorola materials under a protective order would satisfy these concerns, and it reserves the right to raise objections to any procedure established for review of the Motorola materials when the terms are established.

At a minimum, any such protective order must allow: (1) adequate time for interested parties to review and comment on Motorola's April 10 materials; (2) inclusion of technical, business, and legal personnel for each competing applicant in the definition adopted for "specified individuals"; and (3) a procedure for review of the need for any protective order.

Furthermore, LQSS submits that the Commission must flatly reject Motorola's attempt to condition release of materials subject to a protective order on its being allowed to redact these materials to varying degrees.

Once a protective order is in place, redaction becomes redundant and unnecessary. If Motorola does not want the materials as submitted considered by Commission Staff and interested parties, it should simply have all the materials returned to it.

Moreover, by requesting to redact these materials, Motorola has, in essence, requested that the materials submitted on April 10 be returned to it, and new (redacted) materials be substituted in their place. The confidentiality decision may, in fact, have been based on information which Motorola now wants to redact.


Accordingly, because the materials submitted would not be the same as those reviewed for the FOIA decision, the Commission would have to reconsider whether the redacted materials proposed to be released by Motorola should be given confidential treatment at all. If it desires to do so, Motorola should be required to submit the redacted materials for review and reconsideration of the decision to grant confidential treatment.

In summary, LQSS submits that the decision to protect certain Motorola materials should be reversed, and that all the materials be made available to the public. In the alternative, LQSS submits that Motorola's response requires that all materials be returned to it, and none of the April 10 filing be considered by the Commission.

Finally, in the event that a protective order is put in place for interested parties to review the materials submitted by Motorola, LQSS requests that adequate procedures be provided to protect its rights to review and comment.

Respectfully submitted,

LORAL QUALCOMM SATELLITE SERVICES, INC.

By: 
Linda K. Smith
Robert M. Halperin
William D. Wallace

Its Attorneys

cc: Robert L. Pettit, Esq.
Service List

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Comments on Freedom of Information Act Requests and Decision" of Loral Qualcomm Satellite Services, Inc.'s Amendment to Globalstar System Application was served by hand delivery (as indicated with *) or by first-class, U.S. mail, postage prepaid this 18th day of May, 1992 upon the following counsel of record:

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